

REMARKS

Claims 1-4, 7-13 and 15-23 are pending.

By this Preliminary Amendment, Claims 1 and 22-23 are amended. Support for the amendments may be found in the specification as originally filed, such as, for example, page 3, lines 32-36; page 3, line 37 to page 4, line 3; page 4, lines 9-15, and 23-28; and Figures 1-5.

Applicant submits that no new matter is added.

Applicant respectfully requests favorable examination on the merits.

Claim Rejections - 35 U.S.C. §102/§103

The Final office Action dated November 4, 2008, rejected Claims 1-3, 7, and 14-16 under 35 U.S.C. §102(b) as being anticipated by Favre (CH 688686, hereinafter "Favre"); rejected Claim 4 under 35 U.S.C. 103(a) as being unpatentable over Favre in view of Brody (The Encyclopedia of Food Packaging Technology, hereinafter "Brody"); rejected Claims 7-10 and 15-16 under 35 U.S.C. §103(a) as being unpatentable over Favre in view of Arkins et al. (U.S. Patent 6,116,782, hereinafter "Arkins"), Lagneaux (EP 0007876, hereinafter "Lagneaux"), and Cai (U.S. Patent Publication No. 2002/0078831, hereinafter "Cai '831"), and as further evidenced by Robichaud et al. (U.S. Patent No. 5,782,404, hereinafter "Robichaud"); rejected Claims 10-13 and 17-21 under 35 U.S.C. §103(a) as being unpatentable over the references as applied to claims 7-10 and 15-16 above, and in further view of Cai (U.S. Patent No. 6,777,007, hereinafter Cai '007"), Harriss (U.S. Patent No. 2,965,501, hereinafter "Harriss"), Bernhardt (U.S. Patent No. 4,340,138, hereinafter "Bernhardt"), and Petrofsky et al. (U.S. Patent No. 5,045,333, hereinafter "Petrofsky"); rejected Claim 22 under 35 U.S.C. §103(a) as being unpatentable over the references as

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applied to claims 7-10 and 15-16 above, and in further view of Cai '007, Harris, Bernhardt, and Petrofsky; and rejected Claim 23 is rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to claims 7-10 and 15-16, above and in further view of Cai '007, Harris, Bernhardt, and Petrofsky.

Applicant respectfully traverses each of the above-listed rejections for at least the following reason(s).

Independent Claims 1 and 22-23 recite a capsule including, among other features, first and second containers, wherein the second container is attached to the first container. A self-contained and fully enclosed filter pod contained a powdered infusion substance therein is retained within the first container after a removable sheet has been removed from a top of the capsule.

That is, as stated in the Response dated February 4, 2009, and articulated herein in a manner so as to correspond to that which is recited by the pending claims, the pod is a self-contained and fully enclosed structure that is held inside of or retained in the first container even after a removable sheet has been removed from a top of the capsule.

As such, when a user removes the removable sheet of the inventive capsule, a self-contained and fully enclosed pod, which is made of filter paper or a filter material, remains in the first container and retains therein the powdered infusion substance.

Thus, even when the removable sheet is removed from the top of the capsule, a "closed pack" pod remains in the first container.

On the contrary, once the membrane shutter 41 is removed from the capsule taught by Favre, the first container 71 has an "open" upper region and does not retain or contain therein a self-contained and fully enclosed filter pod. Thus, when the shutter 41 is

removed, a user would see the substance held in the first container 71 in a “loose” or “non-retained” manner that is susceptible to spillage, etc. as opposed to being retained in a self-contained and fully enclosed filter pod, as is recited by Claims 1 and 22-23.

As such, Applicant respectfully submits that Favre does not disclose, teach or otherwise suggest each and every feature recited by Claims 1 and 22-23.

Brody, Arkins, Lagneaux, Cai ('831), Robichaud, Cai (007), Harriss, Bernhardt, and Petrofsky do not cure or otherwise address the above-described deficiencies of Favre.

As such, Applicant respectfully submits that Claims 1 and 22-23 are not anticipated by or rendered obvious in view of the applied art of record and should be deemed allowable.

Claims 2-4, 7-13 and 15-21 depend from Claim 1. It is respectfully submitted that these dependent claims should be deemed allowable for at least the same reasons Claim 1 is allowable.

Withdrawal of all the rejections is respectfully requested.

Conclusion

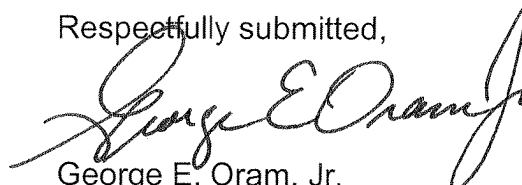
Prompt and favorable examination on the merits is respectfully requested.

In view of the above, reconsideration of the application, withdrawal of the outstanding rejections, allowance of Claims 1-4, 7-13 and 15-23, and the prompt issuance of a notice of allowance is respectfully requested.

Should the Examiner believe anything further is desirable in order to place this application in better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

In the event that this paper is not being timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account Number 01-2300, referencing Docket Number 023349-00298.

Respectfully submitted,



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